



2018

Parliament of Tasmania

PARLIAMENTARY STANDING COMMITTEE

SUBORDINATE LEGISLATION

**PUBLIC HEALTH (INFRINGEMENT NOTICES) AMENDMENT
REGULATIONS 2017 (S.R. NO. 108)**

Members of the Committee

**Mr Craig Farrell MLC
Ms Ruth Forrest MLC
Ms Tania Rattray MLC (Chair)**

**Mr Adam Brooks MP
Mr Mark Shelton MP
Ms Alison Standen MP**

The Committee was appointed under the provisions of Section 3 of the *Subordinate Legislation Committee Act 1969* (No. 44 of 1969). Section 8 of the Act outlines the functions of the Committee, as follows –

- (a) to examine the provisions of every regulation, with special reference to the question whether or not –
 - (i) the regulation appears to be within the regulation-making power conferred by, or in accord with the general objects of, the Act pursuant to which it is made;
 - (ii) the form or purport of the regulation calls for elucidation;
 - (iii) the regulation unduly trespasses on personal rights and liberties;
 - (iv) the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions; or
 - (v) the regulation contains matters that, in the opinion of the Committee, should properly be dealt with by an Act and not by regulation; and
- (b) to make such reports and recommendations to the Legislative Council and the House of Assembly as it thinks desirable as the result of any such examination.

BRIEFING

The Committee held two briefings in relation to the Public Health (Infringement Notices) Amendment Regulations 2017 (SR 2017, No. 108) (the Regulations) on 24 August 2018. The briefings were conducted with anti-smoking advocate Dr Kathryn Barnsley, followed by a separate briefing with the Director of Public Health Dr Mark Veitch and other representatives from the Department of Health.

The decision to undertake the briefings was in part due to the nature of the changes to the Regulations, which provided for the removal of infringement notices as an enforcement provision in certain circumstances, following the repeal of section 41(2) of the *Public Health Act 1997* (the Act). Significantly, the Regulations provided for changes to the enforcement provisions for the sale of tobacco and non-tobacco cigarettes to children under section 64 of the Act in that they moved the enforcement of such offences to court proceedings and introduced a number of additional prescribed offences and increases in infringement penalties under other sections of the Act.

The Committee noted from the documentation provided by the Minister prior to the briefing and following questioning of Departmental Officers, that the decision did not appear to be based on identified difficulties with the existing infringement notices framework. Instead, it was noted to be a policy decision of the Government to reflect its position regarding the serious nature of the offences by moving the enforcement proceedings to a court process.

Dr Barnsley expressed her concern during the briefing in relation to the changes and the possibility that compliance rates may in fact reduce as a result, due to the nature of the court process and based upon her past observations and experiences.

At its meeting on Friday, 24 August 2018, having considered the range of information received, the Committee resolved to pass as ‘Examined’ the – Public Health (Infringement Notices) Amendment Regulations 2017 (SR 2017, No. 108) but noting its concern that the changes may be a retrograde step. The Committee was however satisfied that the decision was a Government policy position and that there were no other grounds of concern identified under section 8 of the *Subordinate Legislation Committee Act 1969* that the Committee could rely upon.

The Committee Chair subsequently wrote to the Minister for Health following a resolution of the Committee to do so, noting the Committee’s concerns with the changes and recommending that the Minister ‘*give careful consideration to monitoring the changes over the coming period to ensure compliance standards are maintained and with a view to reverting to the current arrangements should the level of compliance decline*’.



Tania Rattray MLC
CHAIR

20 September 2018